

## Ombudsman's Determination

Applicant	Mrs R
Scheme	Teachers' Pension Scheme ( <b>TPS</b> )
Respondents	The Governors of the North Cheshire Jewish Primary School (the <b>Governors</b> )

## Outcome

1. Mrs R's complaint is upheld and to put matters right the Governors should pay employer's contributions to the TPS to cover the period 1 April 2000 to 31 August 2001, together with interest. They should also pay Mrs R £500 for distress and inconvenience.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs R has complained that she was not provided with the opportunity to join the TPS when she first began teaching at the North Cheshire Jewish Primary School (the **School**).

## Background information, including submissions from the parties

### Background

4. From 1 September 1987 to 31 August 1989, Mrs R was employed by the Zionist Federation Educational Trust (**ZFET**) to teach Hebrew at the School. From 1 September 1989, the trust became known as the Scopus Jewish Educational Trust (**Scopus**).
5. On 1 April 2000, Mrs R's employment transferred from Scopus to the "Governors of North Cheshire Jewish Primary School". From 1 September 2001, Mrs R's employment transferred to Stockport Metropolitan Borough Council (**Stockport**).
6. Throughout this time, Mrs R had been teaching at the School. Stockport has confirmed that, for the period from April 2000 to September 2001, the School was a school maintained by a local education authority.

7. In 1996, Mrs R joined a pension scheme offered by Scopus (the **Scopus Plan**). This was a money purchase arrangement administered by Norwich Union. This scheme was wound up with effect from 31 March 2000 and the funds transferred to a Norwich Union policy in Mrs R's name.
8. In 2000, Mrs R informed the Governors that she intended to qualify as a teacher in the UK and to join the TPS. She asked if employer's contributions could be set aside in order that a capital sum could be paid when she joined. In a letter dated 30 June 2000, the Chairman of the Governors said he had asked for a reserve to be made and for the TPS to be asked for details.
9. Mrs R has a teaching certificate from Tel Aviv University. In 2001, she also obtained a teaching qualification in the UK.
10. In September 2001, Mrs R joined the TPS.

### **TPS Regulations**

11. At the time Mrs R's employment at the School commenced, the relevant regulations were the Teachers' Superannuation Regulations 1976 (SI1976/1987) (as amended). "Reckonable service" was listed in Schedule 1. The list included, amongst other things, a teacher in a school maintained by a local education authority. These regulations were revoked by the Teachers' Superannuation (Consolidation) Regulations 1988 (SI1988/1652) with effect from 1 November 1988. Under regulation B1, a person was in pensionable employment when he/she was in full-time employment in a capacity described in Schedule 2. The list in Schedule 2 included, amongst other things, a teacher "employed by, or in" a school maintained by a local education authority.
12. In March 2000, the relevant regulations were the Teachers' Pensions Regulations 1997 (SI1997/3001) (as amended). These regulations contained the same/similar provisions as described above. In particular, Schedule 2 referred to a teacher "employed by, or in" a school maintained by a local education authority.

### **Mrs R's submission**

13. The key points raised by Mrs R are summarised below:-
  - From the outset of her employment at the School, she had a formal teaching qualification. She joined the School as a specialist teacher in a subject (Hebrew) for which there were no suitable local candidates.
  - Because she had moved from another country, she was not aware of her rights. She was told by the Governors that she was not eligible to join the TPS until she had a UK teaching qualification.
  - This incorrect advice amounts to discrimination. Other members of staff at the School were able to join the TPS.

- An employer has a duty of care to provide the correct information when asked for advice by an employee on an issue of such importance.
- An offer made by the Governors was put to her on the basis that she should accept it “there and then”, without any information about how it had been determined or how it would be paid.
- She has lost the opportunity to “pension” 13 years of her employment, between 1987 and 2000; albeit that she accrued some pension under the Scopus Plan.

14. Having seen an Adjudicator’s opinion, Mrs R made a further submission. The key points are summarised below:-

- The School’s Jewish department is funded by voluntary contributions from the parents. The Governors are responsible for collecting the funds and the way in which they are spent. She recalls that parents attended open meetings with the Governors in the late 1980s and 1990s at which they were told how the funds had been used.
- The Governors do not have the capacity to deal with paperwork relating to salaries and employ a third party to process payslips and payments.
- She does not consider that she was ever employed by Scopus or the ZEFT. She believes that these organisations provided payroll services for the Governors. She says all her dealings were with the Governors and she never spoke to or had contact with anyone from the ZEFT or Scopus. In particular, Mrs R points out that she was never referred to either organisation when she raised the matter of her pension. Mrs R says a member of the Governors instructed the ZEFT to enrol her in the Norwich Union (Scopus) plan.

15. Mrs R provided copies of letters from the Governors dated 6 December 2002, 17 November 2006 and 1 September 2015. The first states that the staffing committee of the School’s governing body had agreed the level of Mrs R’s salary. The second is a letter offering Mrs R a new post. The third letter advised Mrs R that her employer would be the Governors instead of Stockport.

### **Submission on behalf of the Governors**

16. The key points in the Governors’ response are summarised below:-

- A goodwill offer was made to Mrs R but this should not be taken as the Governors accepting any liability; they do not. This offer has now been withdrawn.
- Mrs R was not enrolled in the TPS because she was not employed by the local education authority; not because she was not qualified. Whilst she was

employed by the Governors, there was no contractual provision for her to join the TPS.

- They acknowledge that it had been agreed, in principle, to set aside funds in 2000/01 but take the view that the matter was only under consideration. They do not accept that it had been agreed that funds would be set aside for payment of a capital sum to the TPS.

## Adjudicator's Opinion

17. Mrs R's complaint was considered by one of our Adjudicators who concluded that further action was required by the Governors. The Adjudicator's findings are summarised briefly below:-

- Mrs R's complaint related to her eligibility to join the TPS. In order to be eligible to join the TPS, Mrs R had to be employed as a teacher by or in a school maintained by a local education authority. This requirement was carried forward through each set of regulations which applied from the time Mrs R began working at the School.
- The Governors appeared to be of the view that Mrs R was not eligible to join the TPS if she was not employed by a local authority. This is not the case. Mrs R was eligible to join the TPS if she was employed as a teacher "by, **or in**" (emphasis added) a school maintained by a local education authority; she did not have to be employed by the local education authority.
- The Governors were now of the view that the fact that Mrs R did not hold a UK teaching qualification would not have been a bar to her joining the TPS. The Adjudicator agreed. The regulations simply referred to employment as a teacher. It was accepted that Mrs R has been employed as a teacher for the whole of the period in question.
- The Adjudicator was of the view that Mrs R was eligible to join the TPS from the date on which she commenced teaching in the School. Further, because Mrs R was employed in a full-time capacity, she should have become a member of the TPS automatically; that is, she was not required to make an election to join the TPS.
- It was not, however, the Adjudicator's view that the Governors should be considered to be responsible for the whole of the period in question. The evidence indicated that, from 1 September 1987 to 31 March 2000, Mrs R was employed by Scopus. The Adjudicator noted that, in the correspondence, Mrs R's solicitor referred to a 1993 performance review as evidence that she was a member of the School's teaching staff. He also noted there was a handwritten comment on the form to the effect that an amount of salary for Mrs R would be "recommended to the ZEFT". This was an indication that, at that time, Mrs R was employed by Scopus; it was responsible for her salary. This was

reinforced by a letter, dated 30 March 2000, from the chairman of Scopus informing Mrs R that her employment was being transferred to the Governors.

- The Adjudicator was of the view that the period of Mrs R's employment in the School for which the Governors were responsible was from 1 April 2000 to 31 August 2001. During this period, Mrs R should have been a member of the TPS and, as a consequence, the Governors should have been paying the appropriate employer's contributions. It was, of course, the case that Mrs R should have paid employee's contributions.
  - The Adjudicator noted that regulation A3 of the Teachers' Pensions Regulations 1997 (see appendix) provided for the local education authority to be deemed to be the employer of every person employed in a school maintained by it. This meant that Stockport would have been responsible for paying over employer's and employee's contributions to Teachers' Pensions (the TPS administrators). It should have been reimbursed for the employer's contributions by the Governors. For this reason, the Adjudicator was of the opinion that Stockport should be joined as an interested party in Mrs R's complaint and provided with an opportunity to comment.
  - The evidence did not, in the Adjudicator's view, suggest that there was any maladministration on Stockport's part. It could not have been aware of Mrs R's status unless notified by the Governors. However, its role as local education authority meant that it would be drawn into any action to put matters right. It was, therefore, only appropriate that Stockport be given an opportunity to comment. Stockport was, therefore, provided with a copy of the Adjudicator's opinion and given the same opportunity to comment as Mrs R and the Governors.
  - The Adjudicator noted there had been some discussion in the correspondence about buying additional service for Mrs R in the TPS. It was not a question of buying additional service; an option which was no longer available. It was a question of now paying contributions which should have been paid in 2000/01 because Mrs R should have been a member of the TPS at that time.
  - It was maladministration on the part of the Governors not to pay employer's contributions to the TPS and Mrs R suffered injustice as a consequence, inasmuch as her service was not treated as pensionable.
18. Mrs R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs R provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs R.

## **Ombudsman's decision**

19. I can understand why Mrs R considered the Governors to be her employer prior to 2000. She has explained that all her personal dealings were with the Governors and she never met anyone from the ZEFT and Scopus. However, if this had been the case, there would have been no need for Mrs R's employment to "transfer" to the Governors in April 2000. The correspondence Mrs R has provided post-dates this transfer and, therefore, does not alter the position.
20. For the period 1 April 2000 to 31 August 2001, Mrs R was employed by the Governors. She should have been a member of the TPS for this period and the Governors should have been paying employer contributions. They should have been sending the employer and employee contributions to Stockport during this time. That they did not amounts to maladministration. Mrs R suffered injustice because her service was not treated as pensionable and she did not accrue benefits in the TPS.
21. Therefore, I uphold Mrs R's complaint against the Governors.

## **Directions**

22. Within 21 days of the date of this determination, the Governors shall liaise with Stockport and Teachers' Pensions to ascertain the amount of employer and employee contributions due for the period from 1 April 2000 to 31 August 2001. The Governors shall inform Mrs R of the amount of employee's contributions. On receipt of the relevant amount from Mrs R, they shall arrange to pay the total amount due to Stockport for onward payment to Teachers' Pensions. If there is interest due on the contributions, the Governors shall pay both that due on the employer's contributions and that due on the employee's contributions.
23. In addition, within the same 21 days, the Governors shall pay Mrs R £500 for distress and inconvenience arising out of their maladministration.

**Anthony Arter**

Pensions Ombudsman  
21 September 2017